

APPENDIX C - MMSD CHAPTER 13 – SURFACE WATER AND STORM WATER

Chapter 13

Surface Water and Storm Water

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Effective Date: January 1, 2002

13.01 Purpose

The purpose of this chapter is to:

- (1) reduce the unsafe conditions, property damage, economic losses, and adverse health effects caused by flooding;
- (2) maximize the effectiveness of flood abatement facilities and watercourse improvements;
- (3) reduce the number and magnitude of releases of sewage to the environment from sanitary and combined sewers and to protect sewage collection and treatment facilities from high flows;
- (4) promote comprehensive watershed planning and intergovernmental cooperation; and
- (5) restore and enhance opportunities to use and enjoy watercourses.

13.02 Applicability

This chapter applies to all users of the sewerage system and all governmental units in the sewer service area.

13.03 Definitions

- (1) "Commission" means the governing body of the Milwaukee Metropolitan Sewerage District.
- (2) "Critical time" means the period starting at the time of peak rainfall intensity with a duration equal to the time of concentration of the watershed.
- (3) "Department" means the Wisconsin Department of Natural Resources.
- (4) "Development" means the construction of buildings, roads, parking lots, and paved or unpaved storage areas, including re-development.
- (5) "FEMA" means the Federal Emergency Management Agency.
- (6) "Governmental unit" means any general purpose or special purpose municipal corporation, including any city, village, town, county, or district.
- (7) "Impervious surface" means any pavement or structural element that prevents rain, surface water runoff, or melting snow from infiltrating into the ground below, including, but not limited to, roofs and paved roads, driveways, and parking lots.

- (8) "Public right of way" means any road, alley, street, parking lot, sidewalk, plaza, mall, or pathway owned by or dedicated to a governmental unit.
- (9) "Recreational trail" means a path that is:
 - (a) distinctly set apart from a roadway, street, or sidewalk;
 - (b) designed for activities such as jogging, walking, hiking, bird-watching, bicycle riding, roller skating, or other recreation not involving the use of motorized vehicles; and
 - (c) not a sidewalk according to sec. 340.01(58), Wis. Stats.
- (10) "Regional flood" means the peak flow and peak elevation of water with a 1% probability of occurring during any one year, considering rainfall time and intensity patterns, rainfall duration, area distribution, antecedent moisture, and snow melt.
- (11) "Regional floodplain" means the area of land covered by water during the regional flood.
- (12) "Runoff release rate" means the volume of storm water flowing off of development per unit of time and area.
- (13) "Runoff management system" means the complete combination of structural and non-structural means used to reduce the rate or volume of runoff from a particular area, including, but not limited to, facilities constructed for conveyance and storage, management practices, and the protection, creation, or restoration of natural areas or systems such as vegetated swales, prairies, and wetlands for storage, conveyance, or infiltration.
- (14) "Time of concentration" means the time required for the point furthest from the outlet of the watershed to contribute to flow at the outlet of the watershed.
- (15) "Ultimate sewer service area" means the maximum geographic area that may receive sanitary sewer service from the District within the foreseeable future, as shown in the *2010 Facilities Plan*, page 2-6 and figure 2-1.

13.04 Watercourse Jurisdiction

- (1) The District may take action to abate the regional flood along the watercourses listed in the appendix.
- (2) District flood abatement action shall be limited to the reduction of regional flood risks.
- (3) District action to abate regional flooding does not modify or eliminate any responsibility of other governmental units for local storm water management or surface water drainage.

- (4) The listing of a watercourse in the appendix does not, by itself, affect any riparian property interest. Riparian property owners retain all the benefits and burdens of ownership, including the duty to use their property in a manner that does not cause harm to or interfere with the rights of others.

13.05 Adding Watercourses

- (1) Any governmental unit may petition the Commission to take action to abate regional flooding risks along a watercourse not already listed in the appendix.
- (2) The petitioner shall submit its petition to the Secretary of the Commission.
- (3) A petition shall identify:
 - (a) the features that create a risk of flood losses,
 - (b) the constructed features that create a risk of flood losses and the related owners or operators,
 - (c) the extent and magnitude of probable flood losses,
 - (d) the actions that would reduce flood losses, and
 - (e) an explanation for why regional action is necessary.
- (4) To add a watercourse, the District shall use procedures for rule-making, according to sec. 200.45(1), Wis. Stats.
- (5) If the Commission fails to act on a petition within one year of submission, then the petition is denied.

13.06 Flood Abatement Projects

- (1) When planning, designing, and constructing flood abatement projects, the District shall include features or use techniques that restore stream habitat, improve water quality, protect wetlands, and enhance public access to and use of watercourses, to the maximum extent practical.
- (2) The District shall utilize non-structural flood abatement techniques, such as conservation easements, whenever practical. The District shall manage conservation easements according to land trust practices.
- (3) The District may straighten a channel, line a channel with an impervious material, or take other activities that merely accelerate flow rates only if no feasible alternative exists.

- (4) The District may not provide direct flood abatement services, such as the purchase of real property, to any property altered, built, or modified in a way that violates floodplain or shoreland zoning requirements, including pre-existing property allowed to continue as a nonconforming use. This prohibition does not apply to properties that are already included in projects planned by the District as of the date of adoption of this chapter.
- (5) Specific requirements in a Commission resolution related to a particular project supersede the requirements of subs. (1) to (4).
- (6) District action to improve a watercourse's bed or banks does not, by itself, create for the District an ownership interest in the bed or banks.

13.07 Watercourse Maintenance When Riparian Land Is Not Owned By The District

- (1) The provisions of this section apply when riparian land is not owned by the District.
- (2) District watercourse maintenance work shall be limited to watercourses listed in the appendix.
- (3) The District shall limit its work to preventing harm from structures constructed or installed by the District and the removal of obstructions that create a threat of harm to structures, unless other work is explicitly authorized by the Commission or is specifically required by a recorded easement; a permit issued by the Department according to Chapter 30, Wis. Stats; a grant agreement; an intergovernmental cooperation agreement established according to sec. 66.0301, Wis. Stats; or an agreement with a donor of land.
- (4) The District may remove an obstruction only if all of the following conditions are satisfied:
 - (a) The riparian owner requests removal,
 - (b) The obstruction would cause the regional flood to damage structures, and
 - (c) The riparian owner does not:
 - 1. impose unreasonable restrictions upon the manner or timing of the District's work,
 - 2. impose access fees, or
 - 3. require a permit, bond, or insurance.
- (5) If an obstruction in a watercourse creates an imminent and substantial endangerment to public safety, then the District may order the riparian owner to remove the obstruction or take other emergency action to eliminate the risk to public safety. The order shall be written, state the reasons for the order, describe the administrative procedures that are available to request modification or reversal of the order, and be hand delivered or delivered by certified mail, return receipt requested. If the recipient requests an administrative review of the order according to

sec. 13.20, then the District shall undertake the review within the shortest reasonable time. If the riparian owner fails to remove the obstruction, then the District may remove the obstruction without regard for any requirements established by the riparian owner. If the District removes the obstruction, then the riparian owner shall reimburse the District's costs.

- (6) Whenever practical, the District shall use maintenance techniques that minimize adverse effects upon fish or wildlife habitat.

13.08 Cost Sharing For The Maintenance Of Dual Use Flood Abatement Facilities

- (1) If a facility constructed for regional flood abatement also provides other functions, such as sports fields, picnic areas, other public park amenities, or best management practices for storm water quality, then the District and the governmental unit where the facility is located shall establish a maintenance cost sharing agreement. According to this agreement, the District may reimburse a portion of the governmental unit's maintenance costs.
- (2) Governmental units are responsible for all costs unrelated to flood abatement, including, but not limited to:
- (a) the design, construction, maintenance, or repair of recreational facilities, restrooms, fencing, board walks, trails, lighting, play grounds, turf, landscaping, and signage regarding access restrictions or hazards, including the cleaning, repairing, and restoration of these features after flooding;
 - (b) snow removal, mosquito control, grass cutting, landscaping maintenance, litter or debris removal for aesthetic purposes, and any other tasks incidental to or necessary for the maintenance of public land or a public right of way; and
 - (c) all costs related to storms with a recurrence interval of 2 years or less and a probability of 50% or more, including costs for removing debris and sediment from basins and other costs related to best management practices for improving storm water quality.
- (3) The District's share of costs shall be limited to: maintaining the structural integrity and operational effectiveness of the berms, retaining walls, or other facilities constructed by the District to abate the regional flood; removing debris deposited by floods caused by storms with a recurrence interval of more than 2 years and a probability of less than 50%; and removing obstructions to inlet or outlet structures.
- (4) The District shall share only direct actual costs. The District may not share in the general operating expenses of governmental units, such as overhead or administrative costs.
- (5) (a) Governmental units shall pay a minimum of 60% of the total maintenance costs, with the District paying the remainder, except as otherwise provided by par. (b).

- (b) A governmental unit may petition the Commission for the District to pay a larger fraction of the cost. The petition shall include facts and arguments showing that costs related to regional flood abatement comprise more than 40% of the total maintenance costs. The petitioner has the burden of persuasion regarding the proposed alternative cost allocation.
- (6) Cost sharing agreements shall use multi-year cost averaging principles, as established for this purpose by the District.

13.09 District Recreational Immunity At Dual Use Flood Abatement Facilities

- (1) For the purposes of this section, "recreational activity" has the meaning established by sec. 895.52, Wis. Stats.
- (2) If an owner, lessee, co-tenant, or occupant of a flood abatement facility constructed according to this chapter imposes a fee for a recreational activity occurring at the facility and if the District does not receive any portion of this fee, then:
 - (a) any person claiming injury from a recreational activity at the facility may not attribute the fee to the District; and
 - (b) the owner, lessee, co-tenant, or occupant shall indemnify the District and hold the District harmless from all claims or liability arising from the activity, except for claims of malicious acts committed solely by the District.
- (3) Any written agreement with the District regarding the use of a facility shall incorporate the requirements of sub. (2).

13.10 Applicability of Runoff Management Requirements

- (1) Type of governmental unit

The following types of governmental units are required to implement the runoff management requirements of this chapter:

- (a) cities,
- (b) villages, and
- (c) any other governmental unit, including counties, special districts, and state agencies, if the governmental unit asserts exemption from local land development requirements and receives sewer service from the District.

- (b) A governmental unit may petition the Commission for the District to pay a larger fraction of the cost. The petition shall include facts and arguments showing that costs related to regional flood abatement comprise more than 40% of the total maintenance costs. The petitioner has the burden of persuasion regarding the proposed alternative cost allocation.
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- (2) If an owner, lessee, co-tenant, or occupant of a flood abatement facility constructed according to this chapter imposes a fee for a recreational activity occurring at the facility and if the District does not receive any portion of this fee, then:
 - (a) any person claiming injury from a recreational activity at the facility may not attribute the fee to the District; and
 - (b) the owner, lessee, co-tenant, or occupant shall indemnify the District and hold the District harmless from all claims or liability arising from the activity, except for claims of malicious acts committed solely by the District.
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- (c) any other governmental unit, including counties, special districts, and state agencies, if the governmental unit asserts exemption from local land development requirements and receives sewer service from the District.

(2) Development where runoff management is required

Runoff management according to this chapter is required for any development that meets all of the following criteria, except as provided in (3).

(a) Area of new impervious surface

Runoff management is required for development that involves an increase of one-half acre or more of impervious surface

(b) Location

Runoff management is required for development within the ultimate sewer service area.

(c) Date of approval

Runoff management is required for development that receives full and final approval from a governmental unit after the effective date of this chapter for all details relevant to runoff management.

(3) Development where runoff management is not required

Runoff management according to this chapter is not required when development meets any one of the following criteria.

(a) Riparian land

Runoff management is not required for sites riparian to the following watercourses:

1. Lake Michigan;
2. the Kinnickinnic River, downstream of Chase Avenue;
3. the Menomonee River, downstream of 27th Street; or
4. the Milwaukee River, downstream of North Avenue.

(b) Residential infill

Runoff management is not required if:

1. The site is five acres or less;
2. The development is exclusively residential;

3. The net increase in the area of impervious surface is less than 20% of the area of the site; and

4. Each boundary of the site is contiguous to:

a. sites that contain earlier development served by sanitary sewers, streets, or public water supply when the governmental unit receives the plans for the new development; or

b. parkland, other public land, a utility right-of-way, or a watercourse.

(c) Minimal impervious area

Runoff management is not required if the area of impervious surface after development will be 5% or less of the total area of the site.

(d) Development approved before the effective date of this chapter

Runoff management is not required if:

1. a governmental unit approved a development before the effective date of this chapter and

2. this approval had sufficient finality to create a vested right to proceed with the development.

(e) Recreational trails

Runoff management is not required for recreational trails if:

1. the trail is less than or equal to 10 feet in width and

2. has a continuous pervious buffer at least 5 feet wide on each side, disregarding interruption by streets, driveways, or other impervious surfaces crossing the trail.

13.11 Runoff Management Requirements

(1) Governmental units shall manage the volume, timing, and peak flow rate of runoff from development approved by a governmental unit after the effective date of this chapter. This management shall prevent increases in the regional flood and stream bank erosion rates.

(2) When selecting the runoff management techniques appropriate for a particular development, governmental units shall consider the following techniques, in order of preference:

- (a) Preservation of the natural features of development sites, including natural storage and infiltration characteristics;
 - (b) Preservation of existing natural streams, channels, and drainage ways;
 - (c) Minimization of new impervious surfaces;
 - (d) Conveyance of storm water in open vegetated channels;
 - (e) Construction of structures that provide both quantity and quality control, with structures serving multiple sites being preferable to structures serving individual sites; and
 - (f) Construction of structures that provide only quantity control, with structures serving multiple sites being preferable to structures serving individual sites.
- (3) To determine the degree of runoff management necessary at a particular development, governmental units shall use either a watershed or an individual development analysis.

(a) Watershed analysis

Governmental units may prepare a watershed or sub-watershed storm water management plan or a local storm water management plan for multiple sites considered together. These analyses shall show how runoff volume is distributed over the critical time of the watershed sufficient to comply with sub. (1). Governmental units shall analyze runoff and determine the critical time according to guidance provided by the District. When evaluating how a development will affect the regional flood, governmental units shall use models and conditions approved by the District. Governmental units shall use 2020 or later land use conditions. Governmental units shall use pre-project channel conditions. Governmental units shall submit these plans and analyses to the District for review and approval.

(b) Individual development analysis

Governmental units may require analyses of individual developments that either:

1. Show that runoff release rates are less than or equal to the following rates:

Storm (probability/recurrence interval)	Maximum Runoff Release Rate (cubic feet per second per acre)
1%/100-year	0.5
50%/2-year	0.15

or

2. Show that runoff will be distributed over the critical time sufficient to comply with sub. (1), according to guidance provided by the District.

- (4) If a governmental unit has established maximum runoff release rates before the date of adoption of this chapter and if those rates are more stringent than the rates in sub. (3)(b)1, then the governmental unit may either continue to implement its rates or implement the requirements of this section.
- (5) If impervious surface is removed after the effective date of this chapter, then governmental units may reduce the degree of runoff management necessary for new impervious surface within the same watershed or sub-watershed, to the extent that the net result complies with sub. (1). Governmental units shall implement this subsection according to guidance provided by the District.
- (6) Runoff management systems may be either public or private.
- (7) Governmental units shall ensure that facilities constructed to manage runoff are maintained to preserve their effectiveness.
- (8) If a runoff management system is not constructed or maintained according to an approved site development storm water management plan or otherwise fails to comply with sub. (1), then the governmental unit shall construct new facilities, expand or correct previously constructed facilities, or implement other remedial action.
- (9) On or before January 1, 2003, cities and villages shall have in effect a storm water management ordinance that implements this section. Cities and villages shall submit their ordinances to the District for review and approval. After adoption, cities and villages shall effectively implement and enforce their storm water management ordinances.

13.12 Site Development Storm Water Management Plans

- (1) For all development subject to sec. 13.10(2), the governmental units listed in sec. 13.10(1) shall submit site development storm water management plans to the District.
- (2) Site development storm water management plans are due within 30 days after all relevant design decisions are complete and the governmental unit has concluded that the development meets all local requirements.
- (3) Site development storm water management plans shall include sufficient information to allow the District to independently evaluate compliance with sec. 13.11. The plan shall:
 - (a) describe the site, including maps showing relevant features;
 - (b) describe the proposed storm water conveyance system;
 - (c) provide data relevant to conveyance system analysis and design;

- (d) if the site will have a site-specific runoff management system or if the site will be the first user of a runoff management system for multiple sites, then provide drawings, design details, design calculations, and a technical analysis showing compliance with sec. 13.11(3);
 - (e) if the site will be tributary to an existing runoff management system for multiple sites, then discuss the location, design, and the available capacity;
 - (f) if the site is in a watershed covered by a watershed storm water management plan that complies with this chapter, then provide a technical analysis showing that the proposed runoff management system is consistent with the watershed storm water management plan;
 - (g) discuss runoff management system operation, inspection, and maintenance requirements and discuss who will be responsible for these activities;
 - (h) describe any loss of natural storage or infiltration;
 - (i) any other information required by guidance provided by the District.
- (4) For phased developments, the site development storm water management plan shall consider the cumulative effect of all phases. A storm water management plan is required if the cumulative amount of new impervious surface is one-half acre or more, even if the individual components of a development each create less than one-half acre of impervious surface.
- (5) If the governmental unit is implementing reduced runoff management requirements in response to the removal of impervious surface at another site, according to sec. 13.11(5), then the site development storm water management plan shall include technical analyses showing that the proposed action complies with sec. 13.11(1) and (5).
- (6) The District may hold site development storm water management plan approvals in abeyance for any governmental unit subject to enforcement action under Chapter 2, MMSD Rules, *Planning Design, and Construction of Sewers and Ancillary Facilities*, or Chapter 3, MMSD Rules, *Infiltration and Inflow Control*.
- (7) During the review of site development storm water management plans, the District shall consider only issues directly related to storm water management. For activities outside of the regional floodplain, the District may not consider other land use, development, redevelopment, or zoning issues.
- (8) A site development storm water management plan is approved if the District has not taken any of the following actions within 10 District work days after receiving the plan: provided notice of disapproval, requested additional information, or provided notice of a need for additional time to review the plan. The maximum additional time for review shall be 20 District work days. A site development storm water management plan is approved if the District has not disapproved

the plan within 20 District work days after either the date when complete additional information is received or the date of a notice of a need for additional time for review.

13.13 Annual Reports

(1) On or before April 30 of each year, cities and villages shall submit an annual report. The report shall contain information for the preceding calendar year for activities within the watersheds of the watercourses listed in the appendix. The report shall organize the information by watershed. The report shall include:

- (a) a copy of the annual report submitted to the department according to the governmental unit's WPDES storm water permit;
- (b) runoff management system inspection and maintenance activities and a discussion of how completed activities compare to the plans provided according to sec 13.12(3)(g);
- (c) a summary of foreseeable major developments;
- (d) a summary of completed and proposed projects that have increased or will increase the diameter of a storm sewer, where the final diameter is greater than 36 inches, and any other projects that have significantly increased or will significantly increase the capacity of storm water conveyance systems or outfalls, not including maintenance of drainage ditches or culvert replacements where the new culvert has substantially the same capacity as the old culvert;
- (e) the status of any watershed storm water management planning being undertaken jointly with other governmental units;
- (f) a discussion of any foreseeable plans to reduce runoff management requirements for new impervious surface in response to the removal of impervious surface at other sites; and
- (g) any other information requested by the District or the governmental unit finds necessary to describe activities affecting runoff volume and peak flow.

(2) Annual reports shall use forms provided or approved by the District.

13.14 Rainfall Data

- (1) When this chapter requires the calculation of runoff, governmental units shall use the most recent rainfall depths identified by the Southeastern Wisconsin Regional Planning Commission.
- (2) The District may approve the use of proposed alternative depths if a governmental unit submits information showing that the proposed alternative depths are more protective than the depths

obtained according to sub. (1) and the governmental unit has adopted the alternative depths in its storm water management ordinance.

- (3) In the ordinance required by 13.11(9), Governmental units shall implement the rainfall depths of sub. (1) or alternative depths approved according to sub. (2).

13.15 Notice of FEMA Map Revisions

Governmental units shall inform the District and provide copies of correspondence regarding any action to revise any FEMA map, including, but not limited to, single residential lot or structure removal from special flood hazard areas, variances, letters of map amendment of any type, changes to base flood elevations, or changes to regional floodplain boundaries, except for actions within the Fox River watershed.

13.16 Notice of Floodplain Zoning Changes

Every governmental unit shall provide to the District notices of petitions to revise floodplain zoning areas or to obtain floodplain variances or floodplain special use permits, except for petitions related to actions within the Fox River watershed. Governmental units shall allow the District to have a meaningful opportunity to be heard regarding whether the proposed action is consistent with this chapter.

13.17 Outfalls and Storm Water Conveyance Systems

- (1) Governmental units shall design and construct storm water conveyance systems, storm water conveyance system upgrades, and storm water outfalls to prevent any:
 - (a) reduction in the level of protection provided by any flood abatement project implemented by the District and
 - (b) increase in the regional flood.
- (2) The District shall develop guidance indicating how it will evaluate compliance with this section.
- (3) If the District finds that the individual or cumulative effect of new or upgraded storm water conveyance systems constructed after July 1, 2002 violates sub. (1), then the District may order governmental units within the watershed to comply, according to sec. 200.45(2), Wis. Stats.

13.18 Obstruction Prevention

- (1) Governmental units shall manage the land they own or maintain and shall manage their public rights of way to prevent debris and sediment from creating obstructions at storm sewer outfalls or storm water drainage structures that discharge to the watercourses listed in the appendix.
- (2) Governmental units shall remove any debris or sediment that obstructs any storm sewer outfall or storm water drainage structure that discharges to a watercourse listed in the appendix.
- (3) The District shall develop and make available to governmental units guidance regarding obstruction prevention.

13.19 Enforcement

- (1) The District may take any action authorized by law to enforce the requirements of this chapter. District action is not limited to the actions listed in this section. The District may take any combination of actions in any sequence, without regard for the order in which actions are listed in this section.
- (2) The District may request records from any governmental unit whenever necessary for evaluating compliance with this chapter. The governmental unit shall provide these records without cost to the District.
- (3) The Executive Director, a Commissioner, the chair of any committee established by the Commission, or the decision-maker at a hearing under sec. 13.20 may issue a subpoena for the attendance of a witness at a hearing or for the production of documents. The subpoena shall be in a form substantially equivalent to sec. 885.02, Wis. Stats., and shall be served according to sec. 885.03, Wis. Stats.
- (4) The District may issue notices of violation and requests for remedial action. This notice shall describe the facts that have caused the District to find that a governmental unit has violated the requirements of this chapter. This notice shall require the submission of a remedial action plan and schedule or other appropriate action.
- (5) The Commission may issue a special order according to sec. 200.45(2), Wis. Stats., or a notice of claim according to sec. 893.80, Wis. Stats., or both. When taking these actions, the order or notice shall describe the nature of the violation and the remedial action the governmental unit must take. The Commission may also request the payment of penalties.
- (6) In a request for remedial action, special order, or notice of claim, the District may require an audit of land development and storm water management activities. The purpose of the audit would be to identify and disclose past violations and identify the actions that would achieve compliance. The District may accept an audit report only if the governmental unit does not

assert any privileges that would limit disclosure of the contents of the report. These privileges include, but are not limited to, attorney-client and attorney work product.

- (7) The District may commence civil litigation to: obtain penalties for past violation to the extent authorized by 200.45, Wis. Stats; obtain injunctions against future violations; abate a public nuisance; or obtain any other remedy authorized by law.
- (8) The District may withhold sewer system improvements that would benefit a governmental unit that is violating this chapter. This action may include: stopping work on facilities under construction; stopping the design of facilities recommended by a facilities plan; deferring planning for sewerage system capacity expansion or relief; or placing a moratorium on requests for approval of sewer connections or service area expansions according to chs. 2 or 7, MMSD Rules.

13.20 Administrative Review

(1) Opting Out of Chapter 68

The procedures established by this section apply to the review of District decisions related to this chapter. These procedures apply instead of the procedures established by secs. 68.01 to 68.12, Wis. Stats., according to sec. 68.16, Wis. Stats.

(2) Initial Review

- (a) Any person or governmental unit aggrieved by a decision under this chapter may request that the District review its decision.
- (b) The District shall review a decision if the Director of Technical Services receives a request for review within 30 days after the requestor received notice of the original decision.
- (c) A request for review shall be in writing and shall contain facts and reasons supporting modification or reversal of the decision.
- (d) Within 30 days after receiving the request for review, the Director of Technical Services or a designee shall either review the original decision and provide a response or provide a notice of when the review will be complete. The Director of Technical Services or the designee may affirm, reverse, or modify the original decision. The Director of Technical Services or the designee shall provide a written explanation. If the decision is adverse to the requestor, then the decision shall explain the procedures necessary for an administrative appeal and the date when the notice of appeal is due.

(3) Administrative Appeal

- (a) Any person or governmental unit adversely affected by a review according to sub. (2) may appeal the decision. To commence an appeal, the appellant shall provide a notice of appeal to the Director of Technical Services within 30 days after the District placed the review in the mail with first class postage paid.
- (b)
 - 1. Within 60 days after the District receives the notice of appeal, the district shall hold a hearing, except as provided in subpar. 2. At least 10 days before the hearing, the District shall mail or otherwise deliver notice of the hearing.
 - 2. In the absence of a dispute regarding scientific or technical facts, the decision maker shall decide the case using summary judgment procedures and only the written record.
- (c) The District shall select an impartial person to be the decision maker. This person shall be someone who did not participate in the deliberations leading to the decision under review. The decision maker shall be a person licensed to practice law in Wisconsin.
- (d) Attorneys may represent the parties and file briefs; present evidence; and call, examine, and cross-examine witnesses.
- (e) The decision maker may issue subpoenas upon the application of a party and the showing of good cause.
- (f) Discovery of District information shall be limited to public records directly related to the case. When providing these records, the District shall waive any fees that the District would normally charge for a records request.
- (g) The decision maker shall hold a pre-hearing conference if requested by any party.
- (h) At least 5 days before the hearing or as directed by the decision maker, the parties shall jointly submit a list of exhibits, witnesses, and a summary of the disputed facts and law. The decision maker may require that exhibits be filed and marked before the hearing.
- (i) Witnesses shall be sworn by the decision maker.
- (j) The decision maker shall maintain a complete record of the proceedings. As directed by the decision maker, the District shall provide a court reporter or other recording device.
- (k) The decision maker shall admit all testimony having reasonable probative value and shall exclude irrelevant or repetitious testimony. The decision maker is not bound by common law or statutory rules evidence. The decision maker shall apply any rules of privilege generally recognized by law.

- (l) The appellant shall have the burden of proof and persuasion. To prevail on scientific or technical issues, appellants shall show that the District used erroneous facts or improper techniques. If an appellant shows only that different techniques could lead to different conclusions, then the District shall prevail.
- (m) Within 20 days after the completion of the hearing or the close of the record, whichever is later, the decision maker shall mail or otherwise deliver to all of the parties a written conclusion and explanation.
- (n) If the decision is not subject to judicial review, then the decision maker shall provide the record of the case to the District's custodian of records within 45 days after the decision is issued.

(4) Finality

- (a) A decision is not final until all available administrative remedies provided by this section have been exhausted, for the purposes of:
 - 1. seeking judicial review according to sec. 68.13, Wis. Stats.; or
 - 2. appealing to the Public Service Commission according to sec. 200.59(5), Wis. Stats., regarding whether charges, rules, or practices established according to sec. 200.59, Wis. Stats., are unreasonable or unjustly discriminatory.

13.21 District Immunity

This chapter does not guarantee any particular level of protection to property, health, or environmental quality. Nothing in this chapter waives any common law or statutory immunity protecting the District against liability for its action or inaction.

13.22 State Requirements

In addition to complying with the requirements of this chapter, persons or governmental units taking action affecting the waters of the state shall comply with the requirements of the public trust doctrine, the public trust servitude, the requirements of Chapter 30, Wis. Stats., and any other applicable requirements established by the Department. If requirements conflict, then the requirements of the Department supercede any requirement of this chapter.